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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,353	03/07/2001	Steven Schwartz	BROOKSTONE 00.04	4898

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EXAMINER

YU, JUSTINE ROMANG

ART UNIT	PAPER NUMBER
3764	

DATE MAILED: 08/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/801,353	SCHWARTZ ET AL.
	Examiner Justine R Yu	Art Unit 3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-48 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-48 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) Interview Summary (PTO-413) Paper No(s) _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Drawings

1. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "generally planar rear surface" in claim 1, "flexible membrane" in claim 6, "percussive or roller massage motors" in claim 17, "removable lamp support housing" in claim 18, "battery" in claim 19, and "the back portion is angularly adjustable" in claim 20 must be shown or the feature(s) canceled from the claim(s).

No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to because in figure 1, the control panel 25 looks like a hole. In figure 4, "35" is directed to an "off" button rather than an "on/off" button. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The title is objected to because the term "bed rest" is misdescribed. Notes that it is understood that the invention is merely a back support or chair type cushion, not a "bed rest".

4. The disclosure is objected to because of the following informalities:

On page 3, line 10, "or" is not understood. On page 6, the reference numeral "23" is not found in the drawings.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 17, 20, 29, and 40 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification fails to adequately teach how to make and use the invention, i.e., fails to provide an enabling disclosure the percussive and roller massage motors. It is not clear how to construct the percussive and roller massage motors. Furthermore, it is not clear how and what structural element being used to angularly adjust the back portion.

4. Claims 15, 17, 27-46 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 is redundant to claim 11.

In claims 17 and 29, it is not understood what is meant by "percussive or roller massage motors" and how to define the structure of such motors.

In claim 27, line 1 "bed cushion" is misdescribed because it contradicts the conventional meaning of the bed's structure.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1- 4, 10-12, 14-20, 25, 27-32, 37, 39, 40, 45, 47, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain (5,713,832) in view of Moceri (3,879,086).

Jain teaches a massaging cushion 10 having a plurality of cushion structures 12 (padded interior), massaging motors 14, and a controller 16. Jain lacks a light source. However, Moceri teaches a lamp including an arm and a light source 66 being detachably mounted on a back of a chair. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Jain's cushion with a lamp as taught by Moceri, order to provide illumination to a user.

Regarding claim 2, figure 22 of Moceri shows a flexible arm 186.

Regarding claim 3, elements 58, 19, and 62 of Moceri (figures 6, 18, and 22) are drafted broadly and read on the structure of the handle.

Regarding claim 17, Jain does not explicitly disclose that the massage motors comprise percussive vibrator or roller massage motors. The feature of choosing different types massaging motors is considered as an obvious design choice since such massaging motors are well known in the art.

Regarding claim 18, notes the removable lamp support housing (30, 32) in Moceri reference.

Regarding claim 19, the feature of choosing a battery power supply rather than AC power supply is considered as an obvious design choice, since the battery power supply is well known in the art.

Regarding claim 20, the feature of having angularly removable back portion relative to the armrest is well known in the reclinable chair.

Regarding claim 25, notes the heat source 130 in Jain reference.

Regarding claim 30, figures 2 and 10 of Jain show that the massaging motors comprise pulsating transducers.

Regarding claims 47 and 48, the feature of choosing a handheldable control panel (or a remote controller) is considered as an obvious design choice since the remote controller is well known in the massage art.

7. Claims 5, 7, 34, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri as applied in claim 4 above, and further in view of Kanda (5,316,369).

The modified Jain reference does not explicitly disclose that the armrest comprises a control panel for altering the on/off status of the light source. However, Kanada teaches an armrest having a control panel with switches for controlling a reading light (column 3, lines 30-37). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the modified Jain's arm rest with a control panel as taught by Kanda, in order to provide convenience to the user. Notes that the feature of having the electrical communication enclosed with in the interior of the cushion for connecting the light source to the control panel is considered as an obvious design choice, since it is necessary and inherent upon various cushion appearances.

8. Claims 6 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri and Kanda as applied in claim 5 above, and further in view of Stottmann (5,453,586).

The modified Jain's control panel lacks a flexible membrane. However, Stottmann teaches a flexible membrane 40 for covering a control panel. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the modified Jain's control panel with a flexible cover as taught by Stottmann, so as to enhance the cleanability.

9. Claims 8 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri as applied in claim 4 above, and further in view of Stimpson (6,388,345).

The modified Jain reference does not explicitly disclose an actuator for adjusting the intensity of the light source. However, Stimpson in column 2, lines 13-17 teaches that it is known that an actuator for adjusting the intensity of the light source. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the modified Jain's cushion with an actuator as taught by Stimpson, in order to control the intensity of the light. Notes that the feature of having the actuator located on the armrest is well known in the art.

10. Claims 9 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri as applied in claim 4 above, and further in view of Tomlinson (5,895,365).

The modified Jain reference lacks a cup holder. However, Tomlinson teaches a cup holder 26 located in the armrest. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the Jain's arm rest with a cup holder as taught by Tomlinson, in order to provide convenience to the user.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri as applied in claim 10 above, and further in view of Liang (5,429,585).

The modified Jain's cushion has motors located within the cushion rather than having motors located within a detachable pillow. However, Liang teaches a massaging pillow being detachably attached to a chair for providing massaging function. Therefore, it would have been

obvious to one of ordinary skill in the art at the time the invention was made to provide Jain's chair with massaging pillow attached to the chair as taught by Liang, since it is a matter of design for art recognized equivalent.

12. Claim 21-23 and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri as applied in claim 1 above, and further in view of Gera (5,335,962).

Jain's cushion lacks a telephone. However, Gera teaches a chair having a telephone which including a base station and a handset (speaker). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Jain's chair with a telephone as taught by Gera, so as to provide convenience to the user.

13. Claims 24 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri as applied in claim 1 above, and further in view of Foster, Jr. et al(5,020,517).

The modified Jain's cushion lacks a bladder. However, Foster teaches a massaging cushion including a bladder 22. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Jain's cushion with a bladder as taught by Foster, in order to enhance the massage effect.

14. Claims 26 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri as applied in claim 1 above, and further in view of Guenther (5,613,222).

The modified Jain's reference lacks a transmitter attached to the arm. However, Guenther teaches a transmitter 23 for picking up sounds made by a person for transmitting such

sounds to the transmitter of the telephone. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Jain's chair with a transmitter as taught by Guenther, in order to pick up sounds made by the person who sits on the cushion. Notes that the feature of having the transmitter attaching to the a particular location, i.e., the arm is considered as an obvious design choice within the knowledge of one skill in the art, since it appears that the modified Jain's cushion would perform equally well with the transmitter attached to the arm.

Response to Amendment

The preliminary amendment filed on 8/20/01 to add claims 46 and 47 has been acknowledged. The newly added claims 46 and 47 have been renumbered to --47-- and --48--, respectively.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. May et al (6,102,476) is cited to show a chair with speakers. Mathers et al (3,736,920), Olesen (3,654,454), Dayton (4,868,888), and Coleman (6,154,690) are cited to show other chair and accessories.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R. Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703)308-5181. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.


Justine R. Yu
Primary Examiner
Art Unit 3764

JY
August 13, 2002